

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Data Capital Corporation,

NO. C 08-00678 JW

Plaintiff,

**ORDER DENYING DEFENDANTS'  
MOTION TO DISMISS AS MOOT**

v.

Safedesk Solutions, Inc., et al.,

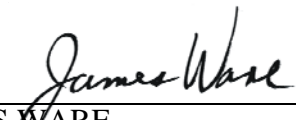
Defendants.

On February 4, 2008, Defendants filed a motion to dismiss Plaintiff's Complaint, and noticed the motion for a hearing on April 7, 2008. (See Docket Item No. 9.) On March 13, 2008, Plaintiff filed a First Amended Complaint. (See Docket Item No. 14.)

Rule 15(a) provides that a party may amend its pleading once as a matter of course at any time before a responsive pleading is served. A motion to dismiss is not a responsive pleading within the meaning of Rule 15(a). Fed. R. Civ. P. 15(a); Allwaste, Inc. v. Hecht, 65 F.3d 1523, 1530 (9th Cir. 1995).

Accordingly, Defendants' motion to dismiss is denied as moot. The April 7, 2008 hearing on the motion is VACATED.

Dated: March 27, 2008

  
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JAMES WARE  
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Clifford Eric Yin, cey@cpdb.com  
3 Julian A. Pollok, [julianpollok@sbcglobal.net](mailto:julianpollok@sbcglobal.net)

4 **Dated: March 27, 2008**

**Richard W. Wieking, Clerk**

5  
6 By: /s/ JW Chambers

**Elizabeth Garcia**  
**Courtroom Deputy**